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BEFORE THE  
Federal Communications Commission  
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 )  
Petition for Rulemaking for the ) RM-9260  
Creation of a Class A Television Service )  
 )

To: The Commission

**COMMENTS OF UNIVISION COMMUNICATIONS INC.**

Univision Communications Inc. ("Univision"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby submits its comments on the petition for rulemaking, RM-9260, regarding the amendment of the Commission's Rules to create a "Class A" television service for certain existing low power television ("LPTV") stations (the "Petition"). For the reasons set forth below, as long as no interference is caused to full power television stations, Univision encourages the Commission to protect the valuable program services that many LPTV licensees provide. Univision is concerned, however, that the proposed definition regarding which LPTV licensees will qualify for Class A television station status fails to adequately target those LPTV licensees providing valuable program services.

As the country's leading Spanish-language television broadcaster, Univision relies heavily upon LPTV stations to serve the Hispanic population of the United States. Univision indirectly owns and operates 13 full-power and 8 LPTV stations, and operates the Univision Network, the most popular Spanish language television network. The Univision network has 41

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television station affiliates, 21 of which are LPTV stations. This reliance upon LPTV stations is largely the result of Univision being a relatively young network, as all full power stations in many markets were already affiliated with well-established English language networks before the Univision Network even existed. Univision's ability to serve the growing Hispanic population in many major metropolitan markets has therefore only been possible through the acquisition of, or affiliation with, LPTV stations.

Despite their limited geographic coverage, Univision's LPTV stations have been quite successful as a result of meeting the distinct needs of their Hispanic viewers. Univision's LPTV stations provide the primary source of Spanish-language television programming in many markets with significant numbers of Hispanic viewers and, consequently, many Hispanics rely upon Univision's LPTV stations for information and entertainment.

Thus, even with the limited coverage inherent in LPTV signals, viewership of Univision's LPTV stations is substantial. While Nielsen ratings information is not available to Univision in most of its LPTV markets, it is available with regard to KABE-LP, Univision's LPTV station in Bakersfield, California. KABE-LP is the most watched television station among 18-49 year olds in the entire Bakersfield DMA.<sup>1</sup> Its prime-time ratings among 18-34 year olds are triple that of the local NBC affiliate,<sup>2</sup> and its network newscast attracts twice as many

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<sup>1</sup>February 1998 Nielsen Station Index for the Bakersfield DMA (Monday - Sunday, 7 a.m. - 1 a.m.).

<sup>2</sup>February 1998 Nielsen Station Index for the Bakersfield DMA (Monday - Saturday, 8 p.m. - 11 p.m.).

viewers in that age group as the network news of ABC, CBS, or NBC.<sup>3</sup> As mentioned above, while ratings information is generally not available for Univision's other LPTV markets, the success of KABE-LP is indicative of the general popularity of Univision's LPTV stations.

As a secondary service, however, Univision's LPTV stations are constantly at risk of being displaced and having their service disrupted. Any future displacement of Univision's LPTV stations would deprive many Hispanic viewers of their main or only source of Spanish-language television programming. Even now, among the hundreds of LPTV stations being displaced to accommodate full power television stations during the DTV transition are Univision's LPTV station serving Philadelphia as well as Univision's affiliate in Washington, D.C. In neither city are comparable substitute channels available, and Univision's ability to provide Spanish-language programming to these and other major Hispanic markets will be severely curtailed by the initiation of DTV broadcasts shortly.

While displacement by the DTV Table of Allotments is largely a *fait accompli*, the Commission should seek to avoid such program service losses in the future. In an effort to accomplish this, the petitioner has proposed to protect certain deserving LPTV stations by elevating these LPTV stations to Class A status, which would eliminate their secondary status and remove the risk of future displacement.<sup>4</sup>

To qualify as a "protected" Class A station, the petitioner has proposed that LPTV stations be required to demonstrate that they possess certain attributes. Among these, qualifying

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<sup>3</sup>February 1998 Nielsen Station Index for the Bakersfield DMA (Monday - Friday, 5:30 p.m. - 6:00 p.m., 6:30 p.m. - 7:00 p.m.).

<sup>4</sup>See Amendment to Petition for Rulemaking, RM-9260 (filed on March 18, 1998) at 1.

stations would have to show that they:

1. comply “with the minimum operating schedule required for television broadcast stations under Section 73.1740”<sup>5</sup>;
2. broadcast “not less than 3 hours in each calender week [] programming produced within the principal city contour . . . of the station, or produced within the principal city contour of any of a group of commonly controlled stations that carry common local or specialized programming not otherwise available to their communities”<sup>6</sup>; and
3. “that the Class A station will not cause interference within the Grade B contour of any television station that is operating on a channel specified in sections 73.606(b) or 73.622(b) as of the date of filing of the Class A application, or within the protected contour of any low power television or television translator station authorized by construction permit or license prior to the date of filing of the Class A application.”<sup>7</sup>

While Univision certainly supports the petitioner’s proposed requirement that Class A stations show that they will not cause interference to existing full power and low power television stations,<sup>8</sup> the petitioner’s proposal for determining which LPTV stations qualify for Class A status fails to accurately delineate those stations that truly have provided exceptional service to their communities.

As written, the definition the petitioner has set forth raises difficult questions as to what constitutes “specialized programming not otherwise available to their communities.” While

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<sup>5</sup>Id. at Appendix A.

<sup>6</sup>Id.

<sup>7</sup>Id.

<sup>8</sup>Univision employs many full power television stations in addition to its LPTV stations to air its Spanish-language programming and recognizes that protecting LPTV stations cannot come at the expense of causing interference to existing full power television stations.

foreign language programming has traditionally been deemed “specialized” by the Commission,<sup>9</sup> under what circumstances will it be deemed unavailable in a community? If a few foreign language programs are carried by local full power stations, or another local LPTV station carries a competing foreign language program service, will Class A status be unavailable to all foreign language LPTV stations in the market? Because of these unnecessary complications, the requirement that an applicant demonstrate that its programming is otherwise unavailable in the market should be eliminated.

Similarly, the requirement of three hours per week of locally produced programming might reward a licensee who constantly airs a tape of his or her daughter’s dance recital, but fails to acknowledge that certain LPTV licensees produce special programming for their audience, but do not do so within the principal community contour of commonly-controlled stations. For example, while some of Univision’s LPTV stations do engage in local production, much of their unique Spanish-language programming, such as their national newscast, is produced by the commonly controlled Univision Network based in Florida. It is therefore possible that some or all of Univision’s LPTV stations would not qualify for Class A status under the petitioner’s proposed requirements despite providing more originally produced programming than any other LPTV station. Considering the importance of Univision’s programming to Spanish-speaking viewers, the chance that Univision’s LPTV stations might not qualify for Class A status

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<sup>9</sup>See, e.g., Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Second Further Notice of Inquiry and Notice of Proposed Rulemaking, 3 FCC Rcd 5179 (1988) at ¶ 82 (specialized format described as “broadcasting in a foreign language”); see also Meredith Corp. West Florida Television, Ltd., 4 FCC Rcd 2666 (Rev. Bd. 1989) at ¶ 41 (specialized television format described as “religious, music, or foreign language”).

illustrates the shortcomings of the petitioner's proposed qualification requirements.

Accordingly, Univision urges the Commission to alter the Class A qualification requirements as follows. First, programming should not be required to be produced within the principal community contour of the station (or of any station in a group of commonly controlled stations). Instead, the programming should only be required to be produced by an entity commonly controlled with the LPTV station in question. This change would permit entities like Univision to continue to produce programming for their LPTV (and full power television stations) in a location independent of each LPTV station's location.<sup>10</sup>

Second, in order to truly separate the LPTV stations that have been providing extensive meritorious service from those that are just "getting by," the Commission should do more than simply require that an LPTV station meet the minimum operating requirements of Section 73.1730 to qualify for Class A status. The requirement should be increased to limit Class A status to LPTV stations that have broadcast programming (not test patterns) 24 hours per day for the year prior to adoption of an order creating Class A service (excluding limited downtime for maintenance). This requirement will ensure that Class A status will be awarded to the most

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<sup>10</sup>If the Commission should nonetheless adopt a Class A requirement based on local program production, Univision urges the Commission to alter the requirement that the programming be produced within the principal community contour of the station. Instead of focusing on principal community contours, the Commission should use the designated market area ("DMA") of an LPTV station. Particularly given the fact that the DTV transition will likely shrink the principal community contour of many LPTV stations, it would appear nearly impossible for many LPTV stations to meet a requirement for production within the principal community contour. Moreover, the demarcation as to where a program was produced and the location of a principal community contour is not easily established in many instances. The use of DMAs would clarify that production in the general area of the LPTV station would qualify as local programming for purposes of Class A status, and the DMA boundaries are far less likely to fluctuate during the DTV transition than a station's principal community contour.

deserving licensees, that the most substantial programming services will be protected from displacement, and that the spectrum used for Class A stations will be utilized to the fullest extent possible, thereby maximizing the benefit to the public.

### **CONCLUSION**

For the reasons set forth above, Univision supports the Petition with the changes proposed herein as a way of protecting valuable public service programming from displacement in the future. Univision therefore urges the Commission to create a Class A television service consistent with these comments.

Respectfully submitted,

**UNIVISION COMMUNICATIONS INC.**

By: Scott R. Flick  
Clifford M. Harrington  
Scott R. Flick

Its Attorneys

Fisher Wayland Cooper Leader  
& Zaragoza L.L.P.  
2001 Pennsylvania Avenue, N.W.  
Suite 400  
Washington, D.C. 20006  
(202) 659-3494

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